

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

MARTHA WONG and DANIEL A.
BERNATH,

3:13-CV-02209-ST

ORDER

Plaintiffs,

v.

CAROLYN W. COLVIN, Acting
Commissioner, Social Security,
Administration, et al.,

Defendants.

BROWN, Judge.

On December 16, 2013, Plaintiffs filed a Complaint in this Court against Defendants alleging claims for (1) conversion/embezzlement, (2) negligent fraud, (3) intentional fraud, (4) breach of fiduciary duty, (5) replevin, (6) unfair business practices, (7) malpractice, and (8) rescission.

On February 25, 2014, Plaintiffs filed a Proposed First Amended Complaint to substitute certain Defendants and to add other Defendants.

On March 4, 2014, Magistrate Judge Janice M. Stewart issued Findings and Recommendation in which she found neither Plaintiffs' Complaint nor Plaintiffs' proposed First Amended Complaint sufficiently established complete diversity of citizenship between the parties. Accordingly, the Magistrate Judge recommended the Court dismiss this matter without prejudice and with leave to file a proposed Second Amended Complaint to allege the basis for this Court's jurisdiction. The Magistrate Judge also stayed all pending Motions until the issue of this Court's jurisdiction was resolved.

On March 17, 2014, Plaintiffs filed a Motion (#126) for Leave to File a Second Amended Complaint.

On April 11, 2014, the Court adopted the March 4, 2014, Findings and Recommendation, dismissed Plaintiffs' Complaint and proposed First Amended Complaint without prejudice for lack of jurisdiction, and reserved to the Magistrate Judge the disposition of Plaintiffs' Motion (#126) for Leave to File a Second Amended Complaint.

On April 14, 2014, Magistrate Judge Stewart entered an Order granting Plaintiffs leave to file a proposed Second Amended Complaint to cure the jurisdictional deficiencies.

On April 25, 2014, Plaintiffs filed a proposed Second Amended Complaint.

On June 10, 2014, Magistrate Judge Stewart issued Findings and Recommendation (#169) in which she found Plaintiffs' proposed Second Amended Complaint fails to cure the jurisdictional defects noted in the March 4, 2014, Findings and Recommendation, and, therefore, the filing of Plaintiffs' proposed Second Amended Complaint would be futile. Thus, the Magistrate Judge recommends this Court deny Plaintiffs' Motion (#126) to File a Second Amended Complaint, deny all pending Motions as moot, and dismiss this matter with prejudice for lack of subject-matter jurisdiction. Plaintiffs filed timely Objections to the June 10, 2014, Findings and Recommendation.

On June 17, 2014, Plaintiffs filed a "Dismissal Without Prejudice as State of Oregon Action Filed" (Docket #177).

On July 11, 2014, Magistrate Judge Stewart issued Findings and Recommendation (#181) in which she recommended the Court grant Plaintiffs' Dismissal (#177) Without Prejudice.¹ Defendants Randy Rosenblatt; Disability Law Office NW, LLC, an Oregon limited liability company; Mick Rosenblatt; Liela Rosenblatt; Leila R. and Milton L. Rosenblatt Living Trust;

¹ Although Magistrate Judge Stewart does not specifically state as such in her Findings and Recommendation, it appears she construed Plaintiffs' Dismissal Without Prejudice as a Motion to Voluntarily Dismiss.

Robert Green; and Barnsley Enterprise, LLC, filed timely Objections to the July 11, 2014, Findings and Recommendation.

The June 10, 2014, and July 11, 2014, Findings and Recommendations are now before this Court pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b).

When any party objects to any portion of the Magistrate Judge's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate Judge's report. 28 U.S.C. § 636(b)(1). See also *Dawson v. Marshall*, 561 F.3d 930, 932 (9th Cir. 2009); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (*en banc*).

I. Plaintiffs' Objections to the June 10, 2014, Findings and Recommendation

In their Objections to the June 10, 2014, Findings and Recommendation Plaintiffs reiterate the arguments contained in their numerous prior filings. This Court has carefully considered Plaintiffs' Objections to the June 10, 2014, Findings and Recommendation and concludes they do not provide a basis to modify the Findings and Recommendation. The Court, therefore, adopts the Magistrate Judge's findings that Plaintiffs have not established this Court has subject-matter jurisdiction and that the filing of Plaintiffs' proposed Second Amended Complaint would be futile. The Court, however, declines to adopt the Magistrate Judge's recommendation to dismiss this matter with prejudice. Because the Court's dismissal is based on Plaintiffs' failure to

establish that this Court has subject-matter jurisdiction, the Court dismisses this matter without prejudice.

II. Defendants' Objections to the July 11, 2014, Findings and Recommendation

Defendants object to the July 11, 2014, Findings and Recommendation on the ground that dismissal under Rule 41(a) is "unjust." Specifically, Defendants assert Magistrate Judge Stewart did not provide any notice to Defendants that she was going to construe Plaintiffs' Dismissal Without Prejudice as a Motion to Dismiss nor did she provide Defendants the opportunity to respond to the document. Defendants point out that Plaintiffs have filed numerous documents, many of which have been random and/or nonsensical and, therefore, Defendants were not aware Plaintiffs' Dismissal Without Prejudice was going to be construed as a Motion to Dismiss. Defendants also point out that they have filed an Answer and Counterclaims, and they did not stipulate to dismissal of this action without prejudice and without costs as required under Federal Rule of Civil Procedure 41(a).

Because the Court has concluded it lacks subject-matter jurisdiction, the Court also concludes it lacks jurisdiction to address Plaintiffs' Dismissal Without Prejudice. See, e.g., *Jones, Blechman, Woltz & Kelly, PC v. Babakaeva*, 375 F. App'x 349, 350 (4th Cir. 2010) (The court concluded it lacked authority to decide a motion to strike a notice of voluntary dismissal after it determined that it lacked jurisdiction over the

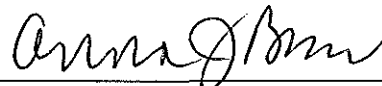
action.)). Accordingly, the Court declines to adopt the July 11, 2014, Findings and Recommendation (#181) and denies as moot Plaintiffs' Dismissal Without Prejudice.

CONCLUSION

The Court **ADOPTS as modified** Magistrate Judge Stewart's Findings and Recommendation (#169) and, accordingly, **DENIES** Plaintiffs' Motion (#126) to File a Second Amended Complaint and **DISMISSES** this matter **without prejudice** for lack of subject-matter jurisdiction. The Court **DECLINES to adopt** the July 11, 2014, Findings and Recommendation (#181) and **DENIES as moot** all pending Motions.

IT IS SO ORDERED.

DATED this 25th day of August, 2014.



ANNA J. BROWN
United States District Judge